THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.23729 of 2006

Dated: 06.02.2007

Between:

Shaik Abdul Khader.

..... PETITIONER

AND

The Andhra Pradesh State Wakf Board,
rep. By its Chief Executive Officer,
Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.23729 of 2006

ORDER:

The petitioner is Mutawalli of Ashurkhana (hereafter called, Wakf) at Mynampadu Village. The Walf owns land admeasuring Acs.11.62 cts in survey No.197 situated at Kanaparru Village, Guntur District. The land was occupied/encroached upon by respondents 4 to 14[1]. On a report submitted by third respondent, first respondent initiated proceedings under Section 54 of the Wakf Act, 1995 (the Act, for brevity) and issued notice on 20.12.2003 to the occupants/encroachers, who allegedly did not submit any explanation. Therefore, first respondent passed orders under Sub-Section (3) of Section 54 of the Act on 31.05.2006 for eviction of the encroachers. Proceedings under Section 55 of the Act were also initiated and first respondent addressed the same to the Revenue Divisional Officer(RDO)-cum-Sub-Divisional Magistrate, Narsaraopet. The Mandal Revenue Officer(MRO), second respondent, was instructed by RDO to take action as per Section 55 of the Act for evicting the encroachers. First respondent also sent a letter dated 25.08.2006 to second respondent requesting to handover the land to the petitioner, in vain. Therefore, instant writ petition is filed.

While the matter was coming up for preliminary hearing on 04.12.2006, learned Assistant Government Pleader for Revenue (General-A) submitted that though second respondent requested the petitioner to take possession of the land, he did not approach second respondent. On 29.12.2006 this Court passed orders observing that as and when the petitioner approaches second respondent, action will be taken to handover possession of the land admeasuring Ac.0.75 cts in survey No.179 situated at Kanaparru Village. Subsequently, it is brought to the notice of this Court that the total extent of the land is Acs.11.62 cts and an extent of Ac.0.75 cts is in occupation of one of the contesting respondents. Be that as it is at that stage an implead petition is filed and the encroachers were impleaded as respondents 4 to 14.

In the affidavit accompanying the application for impleadment, it is alleged that the land is in possession of the contesting respondents since the time of their forefathers, that on an earlier occasion the father of the petitioner entered into an agreement with them recognizing them as enjoyers of the property, that on 05.07.1984 the petitioner entered into an agreement with them in the presence of MRO, Nadendla, and that when the contesting respondents approached first respondent to intervene in the matter, a memo dated 30.09.2006 was issued settling the matter between the petitioner and the occupants of the land. They

also allege that the petitioner suppressed the relevant facts and filed instant writ petition.

Having regard to the provisions of the Act, the averments made in the affidavit filed on behalf of respondents 4 to14 and the subsequent proceedings issued by first respondent, this Court is of the considered opinion that the matter can be disposed of at the admission stage.

Sections 54 and 55 of the Act deal with removal of encroachment on Wakf property. Insofar as first respondent is concerned, after receiving the report of third respondent, a notice dated 20.12.2003 was issued under Section 54(1) calling upon the contesting respondents to remove the encroachment and on 31.05.2006 orders were passed directing the encroachers to remove the encroachments and deliver possession of the land. This was followed by a request to the Sub-Divisional Magistrate for evicting the encroachers and handing over possession to the petitioner/Mutawalli. Things did not move as required under Section 54 of the Act and the petitioner/Mutawalli approached this Court by filing instant writ petition. In the usual course, when a power is conferred on the statutory authority like Sub-Divisional Magistrate to do certain thing in accordance with the Act, there cannot be excuse or escape for the Sub-Divisional Magistrate or second respondent not to implement the orders of first respondent. Indeed second respondent submitted a report dated Nil.12.2006 to RDO, Narsaraopet. A copy of the report is annexed to W.P.M.P.No.676 of 2007. A bare perusal of the same would show that respondents 4 to 14 are in occupation of the property belonging to Wakf by encroaching upon the same and when the matter was enquired into it was reported to MRO that on 30.09.2006 first respondent entered a compromise with the encroachers.

Too much emphasis is laid by the learned counsel for the contesting respondents on this, which is rather misconceived. The memo bearing F.No.344/Prot/M6/GNT/03-Zone-VI dated 30.09.2006 issued by first respondent reads as under.

ANDHRA PRADESH STATE WAKF BOARD

A.P. Haj House Building,
Nampally-Hyderabad.

F.No.344/Prot/M6/GNT/03-Zone-VI Dated:30-09-2006

MEMO

Sub:- Wakfs-Guntur District-Nadendla(M)-Mynapadu H/o Kanaparru (v)-wakf land relating to wakf Ashoorkhana land Sy.No.197-Pay reasonable rent to the Muthawalli- Direction issued-Reg.

Ref:- 1. This office notice of even No.dt.26.12.2003, 31.05.2006 issued to the encroacher Sk.Mastan Sab.
2. Representation of Sk. Mastan Sab R/o Kanaparru(v).

The representation of Sk. Mastan R/o Kanaparru (v) encroacher on the wakf land in Sy.No.197 admeasuring 0.75 cts in the reference 2nd cited has been examined, wherein the details of notices issued u/s. 54(1) and 54(3) also been found, and come to the conclusion that to pay the reasonable lease amount to the Muthawalli by mutual understanding under intimation to this office.

The Muthawalli is hereby directed to perform Moharam every year and shall pay wakf fund through the Inspector Auditor and submit budget estimate every year under the Wakf Act, 1995.

Sd/-
Chief Executive Officer

By no stretch of imagination the above document amounts to compromise between the encroachers and Wakf. Indeed as pointed out by the learned counsel for the petitioner without prior sanction of the Wakf Board under Section 56 of the Act, first respondent cannot enter into such compromise with encroachers. Secondly it only mentions that the encroacher may approach MRO and arrive at a mutual understanding. Admittedly as on today there is no such memorandum of understanding between respondents 4 to 14 and the petitioner. Second respondent or for that matter RDO-cum-Sub-Divisional Magistrate, Narsaraopet, are bound to implement the orders of first respondent passed under Section 54 of the Act.

Learned Assistant Government Pleader submits there is no lapse on the part of second respondent in implementing the orders of first respondent. This is, however, belied by the report of MRO vide letter Rc.No.192/2006-A dated Nil.12.2006 to which a reference has already been made. Therefore, second respondent is directed to evict respondents 4 to 14 from the entire extent of land in survey No.197 admeasuring Acs.11.62 cts and restore possession to Wakf, represented by the petitioner/Mutawalli. This order, however, shall not preclude respondents 4 to 14 to obtain the copy of the orders of first respondent passed under Section 54(3) and to institute a suit in Andhra Pradesh State Wakf Tribunal under Section 54(4) read with Section 83(1) of the Act.

The writ petition, with the above observations and directions, is accordingly disposed of. No costs.

(**V.V.S.RAO, J**)

06th February, 2007
ghn

[1] Respondents 4 to 14 were impleaded by reason of the orders passed in W.P.M.P.No.676 of 2007 dated 06.02.2007